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In the

Supreme Court of the United States

October Term, 1939.

No. 825. 35

KANSAS CITY, MISSOURI, a Municipal Corporation,
Petitioner,

vs.

L. SINGER & SONS, a Corporation, ET AL., *Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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INDEX.

PAGE

Petition for certiorari 1
I. Summary statement of the matter involved 5
II. Jurisdiction 10
III. Questions presented 10
IV. Reasons for granting the writ 15

Brief in support of petition for writ of certiorari 17
I. Opinions of the courts below 17
II. Jurisdiction 17
III. Statement of the case 18
IV. Specifications of errors 18
V. Argument 21
Conclusion 21

Cases Cited.

Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co., 270 U. S. 266 ..... 3, 15, 1[illegible]
Western Pacific California Railroad Co. v. Southern Pacific Company, 284 U. S. 47 ..... 3, 13, 14, 15, 19

Statutes Cited.

Interstate Commerce Act as amended (Act of Congress approved February 28, 1920, 41 Stat. 478, Title 49, U. S. C. A., Sec. 1, Par. 18) 2, 5, 19
Interstate Commerce Act as amended (Act of Congress approved February 28, 1920, 41 Stat. 478, Title 49, U. S. C. A., Sec. 1, Par. 20) 3, 6, 8, 9, 10, 11, 15, 16, 18
Judicial Code, Secs. 212, 213, as amended (Title 28, U. S. C. A., Sec. 45a) 6
Judicial Code, Sec. 240a, as amended by Act of Feb. 13, 1925, C: 229, 43 Stat. 936 (28 U. S. C. A. 347) 10, 17

Federal Rules of Procedure Cited.

Federal rule No. 24 ..... 2, 6

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Kansas City, Missouri, a municipal corporation, respectfully petitions this Court to grant a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit and to remove therefrom to this Court, for review, the record of the case therein pending of Kansas City, Missouri, a municipal corporation, petitioner, against L. Singer & Sons, *et al.*,[1] respondents, being case No. 11489 on the docket of that court.

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[1]The names of all the respondents are as follows: L. Singer & Sons, a corporation; Wm. F. Helm, doing business as Wm. F. Helm Produce Company; Arthur Harris, doing business as Kansas City Fruit & Produce Company; Robert T. Kesting, doing business as H. Kesting Produce Company; Chester F. Urban, doing business as Maguire-Urban Commission Company; Fara D'Angelo, doing business as D'Angelo Celery House; R. E. Mills, doing business as Mills Produce Company; H. R. Raker, doing business as Raker Produce Company; Ralph Hurst; Ralph Hurst & Company, a corporation; Reuben Kaplan, doing business as Royal Food Stores; Earl J. Tranin; Merchants Bank Building & Investment Company, a corporation, and North Side Business & Improvement Association, a *pro forma* decree corporation.

Respondents, who are commission or produce merchants, and property owners within and adjacent to the City Market of Kansas City, Missouri, brought a suit, being cause No. 11480 on the docket of the Eighth Circuit Court of Appeals, against the Union Pacific Railroad Company, a corporation, to enjoin said Union Pacific Railroad Company from constructing an extension of its line of railway in Kansas City, Kansas, to a proposed rival produce market and terminal in Kansas City, Kansas, until the Union Pacific Railroad Company shall have procured a certificate of convenience and necessity from the Interstate Commerce Commission covering said construction, as required by the provisions of Section 402, paragraph (18), of the Transportation Act of 1920 (Act of Congress, approved February 28, 1920, 41 Stat. 456, 477; 49 U. S. C. A., Section 1, paragraph [18]).[2]

Kansas City, Missouri, filed a motion for leave to intervene as a plaintiff (R. pp. 5-20), pursuant to the provisions of new Federal Rule No. 24, covering right of intervention, and in support of said motion to intervene filed a certified copy of a resolution adopted by the Council of Kansas City, instructing the proper officials to intervene for the City, and the proposed intervening petition of Kansas City.

The extent of petitioner's participation and interest in this suit is revealed by the fact that Kansas City is now engaged in constructing, in the vicinity of its present market which has been in existence for more than seventy-

[2]The pertinent part of said paragraph is as follows: No carrier by railroad, subject to this chapter, shall undertake the expansion of its line of railroad or the construction of a new line of railroad, or shall acquire or operate any line of railroad or expansion thereof, or shall engage in transportation under this chapter, over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad. * * *

five years, new wholesale and retail market buildings and facilities, at a cost of approximately $500,000. Said market is now and for a long period of time has been served by existing transportation facilities of various trunk line railroads, which have been and are suitable, convenient and adequate to meet the requirements of the market, and, in addition thereto, petitioner will lose large revenues in the form of taxes upon said land and buildings thereon, by reason of the decline in value thereof, and suffer loss in real estate values, as well as suffer a decline in value of its market and its use to the city, if the Union Pacific Railroad Company so extends its line.

The extent of Union Pacific Railroad Company's interest in this action is revealed by the fact that the cost of the railroad tracks and facilities constructed and to be constructed is about $500,000. In addition thereto, it has assisted in financing the construction of the Kansas City, Kansas, market by purchasing $3,000,000.00 par value of the revenue bonds issued by Kansas City, Kansas. The total cost of that market is approximately $4,000,000.00.

In the decision sought to be reviewed, decided February 7, 1940 (R. 42) (not yet reported), the majority of the Circuit Court of Appeals held that petitioner is not a "party in interest," entitled to maintain a suit to enjoin the unauthorized and, therefore, as alleged, unlawful extension of a line of railroad under the provisions of paragraph (20), Section 402, of the Transportation Act (41 Stat. 478, 49 U. S. C. A. 1 [20]).

Circuit Judge Kimbrough Stone rendered a vigorous dissenting opinion in which he stated that petitioner is "a party in interest" and as the basis for such conclusion relied in part upon the decisions of this Court in *Western Pacific Railroad Company* v. *Southern Pacific Company*, 284 U. S. 47, and *Texas & Pacific Railway*

Company v. *Gulf, Colorado & Santa Fe Railway Company*, 270 U. S. 266. A certified copy, including the proceedings in the Circuit Court of Appeals for the Eighth Circuit, and additional copies of said record and proceedings, as required by Rule 38 of this Court, have been forwarded to the clerk of this Court by the clerk of the Circuit Court of Appeals for the Eighth Circuit.

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The principal question involved in this petition is whether or not the United States Circuit Court of Appeals for the Eighth Circuit was in error in its majority opinion in affirming (R. 42) (not yet reported) the decree of the District Court of the United States for the Western Division of the Western District of Missouri (R. 30) (26 Fed. Supp. 721), and in denying Kansas City's motion to intervene, and holding that it was not a party in interest so as to maintain its proposed petition.

Stated briefly, certain commission merchants of Kansas City, Missouri, brought suit[3] to enjoin the Union Pacific Railroad Company from constructing an extension of its line of railway in Kansas City, Kansas, until such time as it has procured a certificate of convenience and necessity from the Interstate Commerce Commission covering such construction as is required by Section 402, paragraph (18), of the Transportation Act of 1920 (41 Stat. 456, 477; 49 U. S. C. A., Section 1, paragraph [18]).

The complaint of these commission merchants alleges that Union Pacific Railroad Company proposes to construct and operate in interstate commerce, at the cost of some $500,000.00, an extension of its line of railroad which will serve a proposed and partly constructed large produce market costing approximately $4,000,000.00, which is to be constructed by the City of Kansas City, Kansas, and that said produce merchants have places of business within or in connection with a similar market which long

[3] L. Singer and Sons, a corporation, *et al.*, v. Union Pacific Railroad Co., a corporation (R. 1).

has been established in Kansas City, Missouri, and which has adequately served the two cities; and that the Kansas City, Missouri, market is now adequately served by a number of railroads. It is further alleged in the complaint that the change in the transportation situation, which will be created by the unauthorized and, therefore, unlawful extension of respondent's line of railroad would directly and adversely affect their welfare and cause them considerable damage and pecuniary loss (R. 1).

Kansas City then moved to intervene as a party plaintiff upon the ground that it is entitled to jointly maintain this action as a "party in interest" under the provisions of paragraph 20 of Section 1 of the Interstate Commerce Act;[4] and the Judicial Code, Sections 212 and 213, as amended (Title 28, U. S. C. A., Section 45a). Kansas City filed its motion for leave to intervene as a party plaintiff, pursuant to the provisions of new Federal Rule No. 24, covering right of intervention, and in support of said motion to intervene filed a certified copy of a resolution adopted by the Council of Kansas City, instructing the proper officials to intervene for the City and the proposed intervening petition of Kansas City (R., pp. 5-20).

Briefly, said motion stated that there was already pending a suit by certain commission or produce merchants against Union Pacific Railroad Company to enjoin said party from extending its line until it had received a cer-

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[4]Interstate Commerce Act, paragraph (20), Section 1, Title 49, U. S. C. A. The pertinent parts of the paragraph referred to read as follows:

. . . From and after the issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate, and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction in a suit of the United States, the Commission, any commission or regulatory body of the state or states affected, or *any party in interest*. . . . (Italics ours.)

tificate of convenience and necessity from the Interstate Commerce Commission, and that for seventy-five years there has been built up in Kansas City, Missouri, a large volume of business and a great number of merchants engaged in buying and selling, at wholesale and retail, food products in and around the City Market center located in Kansas City, Missouri, and that as a complement to such business there are a great number of firms in said city engaged in business connected with and bearing a direct relation to said wholesale and retail produce merchants and depending upon their business, and that as a result thereof said wholesale and retail produce merchants and these businesses dependent thereon, have invested in real estate, buildings, improvements and equipment in and about said market center many millions of dollars; that said market center is now and has been equipped, for many years, with more than adequate railroad and transportation service, and all appurtenances necessary to a marketing center for a large urban population and is fully able to serve Kansas City and its adjacent territory and the proposed plan and scheme of the Union Pacific Railroad Company is to promote the erection of a competing market center in Kansas City, Kansas, and to build the necessary extension of its lines to serve the same wherein and whereby it will be enabled to control the operation thereof and divert revenues from Kansas City, Missouri, and from the persons engaged in said wholesale and retail produce business, and will thereby divert a large amount of freight and other revenue, and, in addition thereto, many of these individuals and businesses will remove themselves from Kansas City, Missouri, and carry on their business in said competing market center, and thus the personal and occupation taxes and licenses which the aforesaid businesses and persons

ordinarily pay and would pay to Kansas City, Missouri, will be diverted and lost, and will cause a great loss to the city of revenue; and further alleged that as a result of this and the other facts stated there will be a great depreciation of the property of said city, and as a result a great loss in taxes placed upon such property by Kansas City, Missouri. Further, that Kansas City, Missouri, had issued duly authorized bonds to be used in the construction of a new wholesale and retail market in conjunction with the present market of said city, which new market is now under construction and the value of which market, and bonds financing the same, would be greatly impaired if Kansas City, Missouri, would not be allowed to intervene and to enjoin the Union Pacific Railroad Company in its project.

The motion further alleged that the representation of Kansas City's interest by respondents was inadequate, in that the judgment in this action would be binding upon Kansas City, Missouri, and inasmuch as there is no public or *quasi*-public body with any interest in the subject matter which could adequately represent Kansas City as a party to this suit, Kansas City should be allowed to intervene.

Kansas City, by its motion, sought to intervene on its own behalf, and also on behalf of all citizens and taxpayers of said city in that all such have a common and general interest in this proceeding, and the parties are so numerous as to make it impracticable to bring them all before the court.

The motion to intervene was premised, among other things, upon Kansas City being a party in interest within the meaning and intendment of Section 1, paragraph (20) of said Interstate Commerce Act.

The intervening petition of Kansas City followed sub-

stantially the allegations of the motion of Kansas City to intervene and in addition thereto alleged more in detail that the use and operation of the proposed extension of Union Pacific Railroad will seriously interfere with the use and operation of the tracks, loading docks and other appurtenances thereto used by the railroads which have served Kansas City, Missouri, and Kansas City, Kansas, and will cause a material change in the transportation situation in Kansas City, Missouri, rendering loss to Kansas City by adversely affecting the businesses and properties located therein and by impairing the adequacy of the present transportation system to petitioner, and create a rival market without producing additional produce to be handled therein, or additional consumers to be served thereby, resulting in unnecessary duplication of railroad facilities at a cost of over $500,000.00.[5]

The answer of the Union Pacific Railroad Company asserted four defenses, the first three of which were: (1) that the court had no jurisdiction over the subject matter of the action; (2) that the petitioner is not a party in interest under the provisions of paragraph (20) of Section 1 of the Interstate Commerce Act (Title 49, U. S. C. A., Section 1, paragraph [20]), and were not authorized to institute or maintain any action thereunder; and (3) that the complaint failed to state a claim against defendant upon which relief could be granted.

After the aforesaid answer was filed the Union Pacific Railroad Company made application to the District Court to hear and determine before trial the first three defenses set forth therein (R. 24).

The hearing was granted, no evidence was offered, and the case was submitted to the court on the pleadings and brief of counsel.

[5]The complaint is set forth in full at page 12 of the record.

The District Court held that it had jurisdiction of the suit but that the petitioner is not a "party in interest" within the meaning of the statute and hence could not maintain the action, and that, as a consequence, the complaint failed to state a claim upon which relief could be granted.

Petitioner then appealed to the Circuit Court of Appeals for the Eighth Circuit and on February 7, 1940, that court, by a two to one decision, affirmed the decree of the District Court. Judge Kimbrough Stone wrote a strong dissenting opinion in which he found petitioner to be a party in interest so as to be entitled to maintain its action.

II.

Jurisdiction.

Jurisdiction is conferred upon this Court to review this cause by writ of certiorari under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936 (28 U. S. C. A. 347). The date of the application for the writ may be taken as of the date of the filing of the petition in the office of the clerk of this Court.

B.

Questions Presented.

As previously indicated in Section A of this petition, the questions presented are whether the petitioner, which is a municipal corporation of the State of Missouri, and which is interested directly in its City Market and the transportation system thereof, as previously indicated, is a "party in interest" within the meaning of paragraph (20), Section 402, of the Transportation Act (41 Stat. 478, Title 49, U. S. C. A., Section 1, paragraph [20]),

and entitled to intervene so as to be a party plaintiff in an action against the Union Pacific Railroad Company to prevent it from constructing and operating an extension of its railroad to a proposed rival produce market in Kansas City, Kansas, which, by such extension, will directly and adversely affect the property interests of the petitioner by bringing about a material and adverse, burdensome, unnecessary and uneconomical change in the transportation system of said petitioner, and directly and adversely affect its property interests in causing loss to it by depreciation of property values and loss of taxes thereon, together with the loss of occupation licenses from businesses which will move to the rival and unnecessary market in Kansas City, Kansas, for which said extension the Union Pacific Railroad Company has not procured a certificate of convenience and necessity from the Interstate Commerce Commission, as required by law.

The question of whether petitioner is a party in interest within the meaning of paragraph (20) of Section 402 of the Transportation Act was duly raised and passed upon at all stages of the proceeding.

Petitioner, in its motion to intervene (R. 5) and in its proposed intervening petition (R. 12), alleged that it was a party in interest under the provisions of said section. The Union Pacific Railroad Company, in its answer, denied that petitioner was a party in interest under the provisions of said section (R. 20). The District Court upheld that contention in paragraph 4 of its decree (R. 26). Petitioner in its statement of points on appeal (R. 35) alleged, in paragraphs 1, 2 and 3 thereof, that the District Court erred in holding that the petitioner was not a party in interest. The majority opinion of the Circuit Court of Appeals upheld the contention that the petitioner was not a party in interest (R. 42) and petitioner

assigns such action as error in their specification of errors herein.

The opinion of the Circuit Court of Appeals stated that:

> "We realize that the meaning of the 'party in interest,' as used in Section 402, paragraph (20), of the Transportation Act, might be extended to include parties standing in the situation of these plaintiffs and of Kansas City, Missouri. We think that as yet persons in their situation have not been regarded as being 'parties in interest' who may maintain a suit such as this."

Petitioner contends, on the contrary, that the complaint, as pointed out clearly in the dissenting opinion, showed how the welfare, interest and rights of petitioner would be directly and adversely affected as a result of the proposed expansion of the railroad, and how the railroad service which it receives would be impaired, all resultant of the material change in the transportation situation created by the proposed extension of the Union Pacific Railroad.

As stated by Judge Stone, in his dissenting opinion, the following would seem to make Kansas City a party in interest within the meaning and intent of the Act:

> "As to appellant Kansas City, Missouri, the allegation of financial loss is in taxes through diminution of real property values and possible movement of the present produce merchants from the City to the vicinity of the contemplated market in Kansas City, Kansas. Also loss through the situation that it is now erecting a new market structure at considerable cost. It seems to me that these allegations are of sufficient, definite and adverse financial effect to bring the City within the statute.
>
> "I cannot agree that the proposed extension by de-

fendant does not directly affect complainants and intervenor. It is quite evident from the complaint and from the offered intervening petition (1) that plaintiffs and intervenor will be financially affected by the proposed rival market; and (2) that such rival market cannot come into existence without this extension by defendant." (R. 52-53.)

The dissenting opinion of Judge Stone premised its reasoning upon the reasoning followed by this Court in the case of *Western Pacific California Railroad Company* v. *Southern Pacific Company*, 284 U. S. 47, 51-52, which held that the Western Pacific California Railroad Company was a party of interest within the meaning of the Act here in question. *Referring to that case, Judge Stone said that it established direct financial loss caused to a party was sufficient to bring that party within the terms of the act, and that such financial loss is clearly stated in the petition of petitioner in the suit now before this Court* (R. 52). (Italics ours.)

The complaint of petitioner (R. 12-20) alleges and establishes that petitioner's welfare will be "directly and adversely affected" by the proposed material change in the transportation system.

Kansas City's market center, the merchants who are a part thereof, the railroads which serve the same, and the storage and other facilities which surround and are adjacent to the same are all inter-dependent upon each other. Without all of them none could function. If there was no market there would be no freight; if there were no storage facilities there could be no market. These facilities represent millions of dollars in equipment; Kansas City has invested millions of dollars in improvements in and around this locality. Kansas City should have the right to see that its interests and that of the public are

properly presented in determining whether or not the Union Pacific Railroad Co. may go ahead with its project without having first determined the very material question of whether the public convenience and necessity require the existence of double market facilities and double market terminals in this area.

And as stated by Judge Stone in his dissenting opinion:

> "The allegation of financial loss is in taxes through diminution of real property values and possible movement of the present produce merchants from the city to the vicinity of the contemplated market in Kansas City, Kansas. Also loss through the situation that it is now erecting a new market structure at considerable cost."

Kansas City also may be subjected to a loss of transportation service supplied by competing railroads whose service may be curtailed as a result of impairment of their revenues by reason of the new competition set up by the change in the transportation situation. Kansas City thus should be considered within that clause which Congress sought to protect through the enactment of the statute.

This Court said in the case of *Western Pacific California R. R. Co., supra*, 284 U. S., l. c. 51:

> "If, as the court below seems to have assumed, a 'party in interest' must possess some clear legal right for which it might ask protection under the rules commonly accepted by courts of equity, the paragraphs under consideration would not materially aid the congressional plan for promoting transportation."

And also on page 51 of that opinion this Court states its interpretation of the Transportation Act and said:

"It will suffice, we think, if the bill discloses that some definite legal right possessed by complainant is seriously threatened *or that the unauthorized and therefore unlawful action of the defendant carrier may directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation.*" (Italics ours.)

Petitioner contends that the majority of the Circuit Court of Appeals erroneously construed the meaning of "a party in interest" as used in the statute, and as interpreted by this Court in the above cited case of *Western Pacific California R. R. Co.* v. *Southern Pacific R. R. Co.* Petitioner believes that its complaint as well as its motion to intervene shows that the construction and operation of the proposed extension of the railroad by Union Pacific Railroad Company will directly and adversely affect property interests and rights of petitioner and will cause it to suffer a financial loss, and will bring about a material change in the transportation system which will constitute an unnecessary burden upon interstate commerce and directly and adversely affect the welfare and rights of petitioner.

IV.

Reasons for Granting the Writ.

The discretionary power of this Court to grant a writ of certiorari is urged and sought upon the following grounds:

1. The decision and judgment of the 8th Circuit Court of Appeals is contrary to the decisions of this Court in the cases of *Western Pacific California R. R. Co.* v. *Southern Pacific Co.*, 284 U. S. 47, and *Texas & Pacific Ry. Co.* v. *Gulf, Colorado and Santa Fe Ry. Co.*, 270 U. S. 266, construing the provisions of the Transportation Act (41

Stat. 456, 477, 478), and defining the meaning of the phrase "party in interest" as used in paragraph (20), Section 402 of said Act.

2. The decision and judgment of the 8th Circuit Court of Appeals leaves in confusion the meaning of the phrase "party in interest" as used in paragraph (20), Section 402 of the Transportation Act.

3. The decision and judgment of the 8th Circuit Court of Appeals involves a very important question of federal law which should be definitely settled by this Court.[6]

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued to the United States Court of Appeals for the 8th Judicial Circuit to the end that this cause may be reviewed and determined by this Court, and that the judgment of the Circuit Court of Appeals for the 8th Judicial Circuit be reversed, for the reasons and grounds hereinbefore recited.

JOHN M. CLEARY,
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All of Kansas City.

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[6]In his dissenting opinion Judge Stone stated:

"I am constrained to state the grounds for such dissent not only by the need for justifying a dissent from the view of judges for whose judgment I have the highest respect, but also by what I conceive to be *the importance of this decision to the efficient operation of the provision of this Act requiring certificates of convenience and necessity before extensions of railway trackage are permissible* (U. S. C. A. Title 49, Section 1, par. 18).

"The Transportation Act was designed to place the interstate railroads more completely than ever under the fostering guardianship and control of the (Interstate Commerce) Commission, by placing under its supervision various specified matters, among which is construction or abandonment of lines. (*Railroad Commission* v. *Southern Pacific Co.*, 264 U. S. 331, 341-342; *Dayton Goose Creek Ry. Co.* v. *U. S.*, 263 U. S. 456, 478.) *The importance of this control over extensions or abandonments to realization of the purposes of the Act is obvious . * * * Since the above is the only method of protecting and making fully effective this control of the Commission, the importance of any definition of 'party in interest'—those who may initiate such procedure—is evident.*" (Italics ours.)

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of the Court Below.

The decree of the District Court of the United States for the Western Division of the Western District of Missouri, holding that petitioner is not a "party in interest" who may maintain this action; and that the complaint fails to state a claim upon which any relief can be granted in directing a dismissal of petitioner's motion to intervene and of its intervening complaint, appears in the record at page 25, and the memorandum opinion of the court appears in the record at page 30, and is reported in 26 Fed. Sup. 721. The opinion of the Circuit Court of Appeals for the 8th Judicial Circuit affirming the decree of the District Court was dated and entered February 7, 1940, and is found in the record at page 42. It is not yet officially reported.

II.

Jurisdiction.

Jurisdiction is conferred upon this Court to review this cause by writ of certiorari under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, C. 229, 43 Stat. 936 (28 U. S. C. A. 347). The date of the application for the writ may be taken as of the date of the filing of the petition in the office of the clerk of this Court.

III.

Statement of the Case.

A statement of the case is set forth in the foregoing petition under the caption "Summary Statement of the Matter Involved," to which reference is hereby made.

IV.

Specifications of Errors.

1. The Circuit Court of Appeals for the 8th Judicial Circuit erred in affirming the decree and judgment of the United States District Court for the Western Division of the Western District of Missouri adjudging and decreeing that petitioner is not a "party in interest" who may intervene and maintain this action under the provisions of paragraph (20) of Section 1 of the Transportation Act. (41 Stat. 478, Title 49, U. S. C. A., Sec. 1, par. 20.)

2. The Circuit Court of Appeals for the 8th Judicial Circuit erred in affirming the decree and judgment of the United States District Court for the Western Division of the Western District of Missouri adjudging and decreeing that the intervening petition fails to state a claim upon which any relief can be granted, for the reason that said petition states a good cause of action and a claim on which relief can be granted under the provisions of said Transportation Act.

3. The Circuit Court of Appeals for the 8th Judicial Circuit erred in affirming the decree and judgment of the United States District Court for the Western Division of the Western District of Missouri dismissing petitioner's motion to intervene and petitioner's intervening complaint, for the reason that said motion to intervene states proper grounds for intervention and the intervening com-

plaint states a claim upon which relief can be granted under the provisions of said Transportation Act.

4. The Circuit Court of Appeals for the 8th Judicial Circuit erred in affirming the decree and judgment of the District Court for the Western Division of the Western District of Missouri, and in determining that the petitioner is not "a party in interest" within the meaning an intendment of said Transportation Act, because such determination is contrary to the purposes of the Act, and conflicts with the decisions of this Court, interpreting the meaning of said phrase, in *Western Pacific California Railroad Co.* v. *Southern Pacific Company,* 284 U. S. 47, and *Texas & Pacific Ry. Co.* v. *Gulf, Colorado & Santa Fe Ry. Co.,* 270 U. S. 266.

5. The Circuit Court of Appeals for the 8th Judicial Circuit Court erred in affirming the decree and judgment of the District Court for the Western Division of the Western District of Missouri, adjudging and decreeing that the petitioner was not entitled to intervene in said action for the reason that pursuant to the provisions of new federal rule No. 24, covering the right of intervention, the motion to intervene and the proposed intervening petition attached thereto entitled petitioner as a matter of law to the right to intervene in that they each state sufficient facts and allegations to give petitioner a right to maintain such an action and to constitute it a party in interest, entitled to relief prayed, within the terms of the Interstate Commerce Act (Title 49, U. S. C. A., Sec. 1, pars. 18 to 21, inclusive) and within the provisions of federal rule No. 24 governing interventions.

6. The Circuit Court of Appeals for the 8th Judicial Circuit erred in affirming the decree and judgment of the District Court for the Western Division of the Western District of Missouri in adjudging and decreeing that peti-

tioner had no right to intervene and in denying its motion for leave to intervene on the ground that the motion to intervene as a party plaintiff stated no facts sufficient to justify the relief asked therein, for the reason that said motion did state facts sufficient to justify the relief asked therein and to give the right to intervene.

V.
ARGUMENT.

Petitioner Kansas City, Missouri, omits stating any argument here for the reason that the facts and reasons given in the petition for the writ clearly state the position of the petitioner and shows its right to have the writ issued as prayed.

Conclusion.

It is therefore respectfully submitted to this Honorable Court that this case is one of great public importance calling for the exercise by this Honorable Court of its supervisory powers and in order that justice may be done herein and that the confusion and conflicts on important questions herein involved can be corrected and that to such an end a writ of certiorari should be granted and this Court should review the decision of the 8th Judicial Circuit in this case and finally reverse that decision.

Respectfully submitted,

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